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IN THE COURT OF APPEALS OF INDIANA

JONTE LARON REID,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A04-0605-CR-252
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0510-MR-12

April 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Jonte Laron Reid was convicted of murder, and sentenced to a term of sixty-five years imprisonment. On appeal, Reid challenges the trial court's finding that a witness was unavailable under Indiana Rule of Evidence 804, and the resulting admission of the witness' prior testimony elicited at a bail hearing. Concluding the trial court appropriately declared the witness unavailable and allowed the admission of his prior testimony, we affirm.

Facts and Procedural History

The facts are largely undisputed. On April 15, 2005, Kevin Stokes of East Chicago, Indiana, drove to Michigan City, Indiana, in his Cadillac to visit Charles Hackett. After a time, Stokes and Hackett returned to East Chicago. At approximately 6:15 p.m., the men arrived in the Calumet area of East Chicago where they came upon Stokes' acquaintance, Reid, who entered the rear passenger side of the vehicle. The men then drove towards Michigan City. Hackett determined Reid had a .45 semi-automatic weapon. The men eventually stopped at a gas station. The gas station's camera captured the men on film and also captured a view of the Cadillac.

As Hackett and Reid returned to the Cadillac, Stokes' sister called Stokes on Hackett's cell phone. Stokes told his sister he would be returning to East Chicago around 9:00 p.m. Stokes then dropped Hackett off near Hackett's residence. Hackett clocked in at his place of employment at 2:30 a.m. and worked until the following morning, leaving at approximately 11:00 a.m.

At approximately 2:30 a.m., Stokes and Reid drove to visit Stokes' girlfriend, Andria

Cash, who was on her work break. Cash got in the car and Stokes drove them to a store that Cash entered. The store camera captured Cash's arrival and departure. Cash re-entered her place of employment at approximately 3:00 a.m. and worked until 6:00 a.m.

Between 5:00 and 6:30 a.m., after taking his aunt to work, Karl Mahone encountered Reid. Reid got in the car with Mahone. Reid told Mahone that he had just killed Stokes by shooting him in the head while Stokes sat in the Cadillac. Reid also told Mahone that after Reid shot Stokes, Dontay King had then placed Stokes in the back seat of the Cadillac and shot Stokes again. Reid explained to Mahone that he shot Stokes because Stokes had testified against another person who was then convicted of murder. Reid and Mahone drove to where Reid had left Stokes' body in the Cadillac. After seeing the vehicle, Reid and Mahone drove to a place where Reid left Mahone's vehicle and Reid then departed in another vehicle.

At approximately 6:45 a.m., Stokes' body was discovered. He was found in the Cadillac with a gunshot wound to the head. The police were called to the scene.

At approximately 11:30 a.m., Hackett encountered Cash, who told him that Stokes had been killed. They went to the police station and identified Reid in a photo line-up. Later, police investigators verified that Hackett was at work between 2:30 a.m. and 11:00 a.m. on the morning of the murder. The Lake County Crime Lab verified that the bullets recovered from Stokes' body came from a .45 caliber semi-automatic weapon. The police investigator was able to verify facts given to him regarding the whereabouts of Cash and Hackett by viewing videotapes at the gas station and the store, and by speaking to supervisors at each

person's work location.

Thereafter, on August 23, 2005, Mahone contacted the police to make a statement implicating Reid and King in the murder of Stokes. Reid and King were later charged with the murder of Stokes.

On August 25, 2005, shots were fired at Mahone's car and his person. King's cousin was charged with attempted murder.

On December 13, 2005, a hearing on Reid's "Petition To Let To [sic] Bail" ("bail hearing") was held. Mahone was called by the defense. Mahone was also questioned by the State and again by the defense. Mahone testified that Reid had admitted killing Stokes. At the end of the bail hearing, lasting approximately two hours, the trial court inquired of the attorneys whether they would need Mahone at trial. The defense advised the court that Mahone would be needed at trial. Defense counsel stated that he could subpoena Mahone directly, but that, due to the lack of an address for Mahone, defense counsel asked the court to order Mahone to appear for purposes of trial. The trial court ordered Mahone to appear for Reid's trial, which was scheduled for the following week, and Mahone stated he understood.

The trial was postponed and reset for February 27, 2006.

On January 24, 2006, prior to the start of trial, Mahone was shot outside of his residence in the face and the back, sustaining numerous injuries requiring hospitalization. On January 25, 2006, while in the hospital, Mahone gave a statement to police, regarding the incident and identifying the person who shot him, a cousin of Reid's co-defendant. Mahone was released from the hospital on February 3, 2006.

On Monday, February 27, 2006, Reid's jury trial began. On Thursday, March 2, 2006, a bench conference was held regarding the unavailability of Mahone as a witness. The State told the court that after Mahone's release from the hospital, the State was unable to contact him. The State sent its investigator to where Mahone lived and found he was no longer living there. The State told the court its investigator and other police officers were trying to find Mahone, but as of the start of trial, they had not talked to Mahone and did not know where he was. Then, on Tuesday, February 28, 2006, Mahone contacted the State's investigator and left a cell phone number. The deputy prosecutor contacted Mahone. Mahone told the deputy prosecutor he was residing in a town 800 to 900 miles away, but would not provide an address. Mahone indicated he was willing to return to testify. The State then arranged for Mahone to travel by bus to attend the trial and for the police investigator to meet him upon his arrival. However, Mahone failed to make the bus. The State discovered a few hours before the bench conference that Mahone failed to arrive. The State requested that the court declare Mahone was unavailable and allow his prior bail hearing testimony to be read into the record. Reid objected. The trial court found there had been ample opportunity to develop the testimony at the bail hearing through direct and cross-examination; however, the trial court was not satisfied that Mahone was unavailable. The deputy prosecutor stated he would contact the cell number Mahone provided during the lunch break and provide the trial court with more information, if possible. The trial court then cautioned the attorneys that the submission of Reid's bail hearing testimony might raise hearsay problems and that they should begin to think about what part of the testimony should

be submitted.

Later that day, another bench conference was held. The State informed the court it had been successful in contacting Mahone by calling the prior cell phone number and requesting the person who answered to have Mahone call back. When Mahone called back, he stated he was using a borrowed calling card. Mahone stated that he was in the same city as when they last spoke and that he did not get on the bus because he had a doctor's appointment relating to the prior shooting. Mahone said he was willing to come back to testify at trial. The State offered to arrange air transportation for Mahone; however, Mahone declined because he did not have identification. Mahone would not provide an address, stating he had no place to live. Subsequently, the calling card minutes expired. The State tried again to reach Mahone but was told by the person answering the phone that she had not seen Mahone. The State told the court that if Mahone did call back and name a specific location, an investigator would go to pick up Mahone and escort him back. The trial court then stated it did not have enough information to declare Mahone unavailable because Mahone had indicated he was willing to testify. The court advised the State to update the court the following afternoon.

Then, on March 3, 2006, at a bench conference, the State informed the court it had spoken with Mahone's sister on the evening of March 2, 2006, and requested that she have Mahone contact the State. The State made three further attempts the morning prior to the hearing to contact Mahone, with no success. The deputy prosecutor stated that there was nothing the State had done to seclude Mahone away. Rather, after Mahone's release from the

hospital, the State had directed its investigator and other police to get Mahone to court. The State again moved for Mahone to be declared unavailable. The trial court restated that the defense had had a full opportunity to develop the testimony of Mahone through cross-examination but that it was premature to declare Mahone unavailable. The trial court ordered that the trial be stopped and that it be reconvened the following Wednesday, March 8, 2006. The trial court suggested the State provide Mahone's medical records, and corresponding affidavit and charging information in the action surrounding the shooting injuries to Mahone.

Thereafter, on March 7, 2006, the trial court held a conference with the parties. The court was provided with a certified copy of the charging information and the medical records as requested.

On March 8, 2006, a bench conference was held wherein the State informed the court of its recent unsuccessful attempts to contact Mahone by phone. Further, the State informed the court that pursuant to the court's earlier direction, the State and the defense met to thoroughly review the bail hearing transcript and came to an agreement as to what should be admissible and what should be kept out should the court declare Mahone unavailable. The parties agreed on a redacted transcript and further agreed that the State would read to the jury all of the questions that were asked and all of the answers that were given**.** The trial court then declared Mahone to be an unavailable witness under Rule 804 and granted the State's request to admit the relevant portions of the transcript of the bail hearing that was taken on December 13, 2005. The court reiterated its belief that the defense had, at the bail hearing, the full opportunity to question Mahone and to develop his testimony. The court also noted

that as instructed the parties had reviewed the bail hearing transcript to try to eliminate any portion that may contain hearsay or other nonrelevant information that should not go before the jury and that the parties had come to a general agreement as to what portions of the transcript to put before the jury. Relevant portions of Mahone's testimony were then read to the jury. Upon the close of trial, the jury returned a guilty verdict and Reid was subsequently sentenced to sixty-five years of incarceration. Reid now appeals his conviction.

Discussion and Decision

Reid contends that the trial court erred in declaring Mahone an unavailable witness and admitting into evidence Mahone's bail hearing testimony. We disagree.

I. Standard of Review

The decision whether to admit former testimony of an unavailable witness is within the sound discretion of the trial court. Rhea v. State, 814 N.E.2d 1031, 1033 (Ind. Ct. App. 2004), trans. denied. Its decision will not be reversed absent a showing of manifest abuse of discretion resulting in the denial of a fair trial. Guy v. State, 755 N.E.2d 248, 252 (Ind. Ct. App. 2001), trans. denied. In determining the admissibility of evidence, the reviewing court will consider only the evidence in favor of the trial court's ruling and unrefuted evidence in the defendant's favor. Id. An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. Payne v. State, 854 N.E.2d 7, 22 (Ind. Ct. App. 2006).

II. Unavailability

Generally, the prior testimony of a witness offered in court to prove the truth of the

matter asserted represents classic hearsay. Guy, 755 N.E.2d at 253. Pursuant to Indiana Evidence Rules 802, 803 and 804, hearsay is inadmissible unless it fits within a few well-delineated exceptions. Id. One such exception is when the witness is unavailable, the testimony offered was given by the witness at a former hearing of the same proceeding, and the party against whom the testimony is offered had an opportunity to develop the testimony by direct, cross, or redirect examination. Ind. Evidence Rule 804(b)(1).

> Prior recorded testimony may be admitted if the trial court finds that: (1) the testimony was given under oath at a prior judicial proceeding; (2) the party against whom the testimony is offered had the opportunity to cross-examine the witness at the prior proceeding; and (3) the witness is unavailable at the time of the later proceeding.

Rhea, 814 N.E.2d at 1033 (citing Guy, 755 N.E.2d at 254.). "Unavailability as a witness" includes situations in which the declarant "is absent from the hearing and the proponent of a statement has been unable to procure the declarant's attendance by process or other reasonable means." Ind. Evidence Rule 804(a)(5). A witness is unavailable for purposes of the Confrontation Clause requirement only if the prosecution has made a good faith effort to obtain the witness' attendance at trial. Garner v. State, 777 N.E.2d 721, 724 (Ind. 2002) (citing Jackson v. State, 735 N.E.2d 1146, 1150 (Ind. 2000)). "Even if there is only a remote possibility that an affirmative measure might produce the declarant at trial, the good faith obligation may demand effectuation." Garner, 777 N.E.2d at 724-25 (emphasis in original) (citing Gillie v. State, 512 N.E.2d 145, 150 (Ind. 1987)). "Reasonableness is the test that limits the extent of alternatives the State must exhaust." Id.

> The law does not require the doing of a futile act. Thus, if no possibility of procuring the witness exists (as, for example, the witness' intervening death),

> "good faith" demands nothing of the prosecution. But if there is a possibility, albeit remote, that affirmative measures might produce the declarant, the obligation of good faith may demand their effectuation. "The lengths to which the prosecution must go to produce a witness … is a question of reasonableness." California v. Green, 399 U.S. [149], at 189, n. 22 [90 S.Ct. 1930, 1951, n. 22, 26 L.Ed.2d 489 (1970)] (concurring opinion, citing Barber v. Page, supra, [390 U.S. 719, 88 S.Ct. 1318, 20 L.Ed.2d 255 (1968)]). The ultimate question is whether the witness is unavailable despite good-faith efforts undertaken prior to trial to locate and present that witness.

Gillie, 512 N.E.2d at 150, (citing Ohio v. Roberts, 448 U.S. 56, 74 (1980)).

In Gillie, the efforts of the State were found not to provide a solid foundation for a finding of unavailability. The State subpoenaed the witness twice, once at his former Indiana address and once at his Texas home. When the witness informed the prosecutor that he could not afford the trip to testify, the State informed the witness of reimbursement, but the prosecutor took no action after the witness later called to inform the prosecutor of his decision not to testify. Noting that the prosecutor could have sought a continuance to enforce the subpoena or make further travel arrangements for the witness, the court stated, "[t]he availability of such options presented more than a 'mere possibility' that the witness' appearance could be obtained." Id.

In contrast, prior testimony has been allowed where the court found the State had made a good faith effort to produce the declarant after the declarant did not appear at trial. See Gallagher v. State, 466 N.E.2d 1382, 1386-87 (Ind. Ct. App. 1984). In Gallagher, the expected witness did not appear at trial despite the issuance of a subpoena.[1] Id. at 1386.

[1] While the State submitted at trial an exhibit of its subpoena for Mahone that instructed Mahone to appear at the bail hearing, the State failed to submit any evidence of a subpoena for Mahone to appear to testify at trial. The State represented to the court that it had handed Mahone a subpoena on the evening of

Upon his failure to appear, the State requested a bench warrant for the witness and also attempted to locate the witness by using the National Crime Computer. Id. at 1387. In addition, the police contacted the witness' bondsman, ex-wife, and mother to aid in locating the witness. Id. A policeman also went to the witness' last known address. Id. On the second day of trial, a police officer testified as to his inability to locate the witness and the State moved to admit the witness' prior deposition testimony. The court found unavailability was established because the witness could not be located despite a good faith effort by the prosecution. Id. See also Ingram v. State, 547 N.E.2d 823, 827 (Ind. 1989) (good faith effort was made where, at the time of trial, witness did not respond to subpoena; detective then inquired at her last known address, her place of employment, foster home where her children lived, her parents' and aunt and uncle's, and various business establishments likely to have contact with her); Johnston v. State, 517 N.E.2d 397, 399 (Ind. 1988) (good faith effort made where attempts made prior to trial included calling declarant's and her mother's telephone number, and running declarant's name and social security number through computer systems of Bureau of Motor Vehicles, the Indianapolis Police Department, and Drug Enforcement Agency).

In this appeal, Reid challenges the sufficiency of the State's proof that Mahone was "unavailable" under Indiana Evidence Rule 804(a)(5), arguing that the State did not exercise

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December 13, after the bail hearing. Transcript at 753. However, the State subsequently moved for a continuance of the trial, resulting in the trial not starting until February 27. The defense surmised Mahone was probably given a subpoena to be at trial on December 19, with the expectation that that date may change. Tr. at 768. The evidence does show that at the close of the bail hearing, the court ordered Mahone to appear for trial and Mahone stated he understood.

due diligence in attempting to secure Mahone's appearance at trial. Rather, Reid complains, the State failed to send agents to escort Mahone back for attendance at trial, and failed to use the Uniform Act to Secure Attendance of Witnesses ("the Uniform Act").[2] He asserts that before the State may use the prior testimony of a witness, the State must demonstrate that an effort was made to secure attendance of the witness using the Uniform Act, citing Bartruff v. State, 528 N.E.2d 110 (Ind. Ct. App. 1988), trans. denied. The Bartruff court stated:

> …we believe the minimum required to show a good faith effort in this regard is evidence the prosecution filed a petition for the issuance of a subpoena under I.C. 35-37-5-5 and continuing reasonable attempts to procure the witness's attendance at trial before his deposition is admissible, even though the witness was subject to cross-examination when the deposition was taken.

528 N.E.2d at 115.

The Uniform Act is designed to provide a method of compelling attendance of witnesses from another state to appear in Indiana, and it authorizes the issuance of subpoenas to that end. Forbes v. State, 810 N.E.2d 681, 683 (Ind. 2004). It does not provide any explicit remedies for failure to follow its procedure, and is not the exclusive procedure to obtain a witness from another jurisdiction. Id. at 683-84. To invoke the statute, a judge of an Indiana court is to issue a "certificate" reciting that the person is sought as a material witness and the certificate is presented to a judge in the county of the other state. Id. As the Uniform Act is reciprocal, the other state's statute must be reviewed to determine if Indiana's statute and the sister state's requirements are complimentary such that invoking the Uniform Act would be productive. Id.

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[2] Indiana Code § 35-37-5-5.

In the instant case, the record does not reflect the state of Mahone's residence at the time of the trial. As this information was not disclosed, the State points out, there is no way of determining if the resident state had a reciprocal statute or if the other state would give Mahone protection under these circumstances. Also, the State argues, the Uniform Act is not mandatory legislation and the burden is on the appellant to prove that the court's decision was clearly against the logic and natural inferences to be drawn from the record, citing Becker v. State, 695 N.E.2d 968, 972 (Ind. Ct. App. 1998).

The trial court specifically stated:

> I believe the State has acted diligently in their [sic] efforts to secure the attendance of Mr. Mahone. I believe that they've [sic] acted reasonably in those efforts as well. I do not believe that the lack of attendance was in any way procured by the State of Indiana who was, of course, the proponent of this witness. I believe that [the prosecutor] has also acted in good faith in trying to secure the attendance. He even indicated, no reason to question that, that he would prefer Mr. Mahone be here than to try to admit a transcript. And it certainly would be preferable in this proceeding as well to actually have Mr. Mahone. The fact of the matter is that he's not here and we need to deal with that in the best way that we can, considering the rules of evidence and case law.
>
> And with that being said I do believe, as I've indicated in a prior hearing under this 804 issue, that you, Mr. Reed, in representing your client has - - you have had the full benefit and opportunity not only to question this witness, but also to develop his testimony as well, which is something that must be considered on whether the transcript should be admitted. This occurred during the course of a bail hearing. In that bail hearing he was certainly called by you - - he, meaning Mr. Mahone. And even after you were finished with your direct examination you had the further opportunity to develop that testimony by redirect or requestioning of this witness. That gives me the impression and certainly the faith that you certainly had the opportunity to develop this witness' testimony, which is a mandatory consideration in my opinion under rule 804.
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> I do believe that given all this consideration and everything that I've

> heard from the State and their efforts, and certainly the fact that Mr. Mahone is not here, I have no alternative but to declare Mr. Mahone an unavailable witness under rule 804. I think it's proper under the circumstances. I'm going to grant the State's request to admit the relevant portions of the transcript of the petition to let bail hearing which was taken on December the 13th, 2005.

Tr. at 808-10.

Here, the State demonstrated a good faith effort to produce Mahone as a witness at trial. Mahone was subpoened to testify at the bail hearing, which he attended on December 13, 2005. At the end of the bail hearing, at the request of defense counsel, the court ordered Mahone to appear for Reid's trial and Mahone stated he understood. Thereafter, on January 24, 2006, Mahone was the victim of a shooting and was hospitalized. He subsequently gave the police a statement on January 25, 2006. After his release from the hospital, on February 3, 2006, the State was unable to contact him. The State's investigator went to where Mahone lived and found he was no longer living there. The State had its investigator and other police officers trying to find Mahone during the period prior to trial, but as of the start of trial on February 27, 2006, they did not know where Mahone was. The State's investigators repeatedly called Mahone's Indiana family members. After the investigators searched for Mahone, Mahone contacted the investigator and left a cell phone number to reach him. When the State talked with Mahone, on the second day of trial, Mahone stated he was 800-900 miles away, but he was willing to return to testify. The State arranged for Mahone to travel by bus to attend the trial and for the police investigator to meet him upon his arrival. However, Mahone failed to make the bus. On Thursday, the fourth day of trial, the prosecutor called the number Mahone had previously left, spoke to a woman who said she

was Mahone's sister, and requested she have Mahone call. When Mahone called, he stated he was still in the same city. Mahone further indicated that his doctor's appointment had precluded him from taking the bus earlier in the week, but he indicated he was still willing to come back for the trial. The State offered to arrange for a plane ticket, but Mahone declined due to a lack of identification. The State offered to send an investigator to his location and escort him to trial, but Mahone would not divulge to the State his exact location, nor would he provide a location where an investigator could meet him. Mahone represented he was using a borrowed calling card with very few minutes. He stated he did not know his specific address, he did not have a place to live, and could not live in his prior Indiana home because his family was in fear after the shooting incident. When the calling card subsequently ran out, the prosecutor tried to reach Mahone at the previous number but was told the person had not seen Mahone. The prosecutor stated he did not have a way to contact Mahone, but if Mahone did call back an investigator would pick him up and escort him back to Indiana if Mahone would name a specific location. The State represented that the police department and the prosecutor's office had diligently tried to get Mahone to court.

Being mindful of the trial court's discretion in this area, we find no abuse in the trial court's finding that Mahone was unavailable for purposes of Rule 804(a)(5). Mahone did not appear to testify at trial despite his statements that he would testify and despite the reasonable efforts by the State to locate him prior to trial and to present him as a witness. Mahone appeared to be cooperative in that he appeared and testified at the bail hearing in December, giving the State no reason to believe he would not do so again. The State was aware

Mahone had been the victim of a shooting, had been hospitalized, and had given a statement to police in January. When Mahone was released from the hospital on February 3, 2006, the State sent an investigator to his residence and then determined Mahone was no longer living there. The State attempted to locate Mahone at that time. Although it appears the State commenced its search for Mahone about two weeks before the scheduled trial date, this was reasonable. See Gallagher, 466 N.E.2d at 1386-87 (good faith effort by prosecution to locate witness started after witness failed to appear to testify at trial). There was no indication prior to February 3 that Mahone would be unavailable for trial. He was known to live with family in the area. Importantly, he stated he understood the court's order to appear to testify at trial and represented to the State that he would appear to testify at trial. Mahone had been in contact with the police within several weeks of the trial date when he gave a statement about the shooting. These facts would not put the State on notice that Mahone might not appear for trial. When, on the second day of trial, the State received a telephone call from Mahone, he continued to express his willingness to testify. Thus, it appears there was every reason to believe he would be available when needed. Unlike the State in Gillie, here the State made a reasonable attempt to make travel arrangements for Mahone to secure his appearance and continued to attempt to contact him after the original travel arrangements failed. Under these circumstances, we hold the trial court did not abuse its discretion by finding that the State acted in good faith and made a reasonable effort to make Mahone available at trial.

With regard to the prior testimony, "prior testimony from a subsequently-unavailable witness is admissible at a subsequent trial, provided that the defendant had the opportunity to

confront the witness when the testimony was originally given." State v. Owings, 622 N.E.2d 948, 951 (Ind. 1993). The prior testimony may be allowed:

> provided that the trial court finds (1) the witness is "unavailable" and (2) the statement to be used bears sufficient "indicia of reliability." The "reliability" requirement is usually satisfied where there is recorded testimony taken by defense counsel during which defense counsel comprehensively questions the witness about his memory and perception of the incidents surrounding the crime, possible bias, and the veracity of the testimony. In short, a deposition which comports with the principal purposes of cross-examination provides sufficient "indicia of reliability." The focus of the test is not upon whether the trial court believes the witness to be telling the truth, but rather upon the process by which the prior statement was obtained.

Id. at 952 (citation omitted). "Testimony given under oath, subject to penalties of perjury and recorded by a court reporter has sufficient indicia of reliability." Id. at 953.

> The right of confrontation under the Sixth Amendment is honored where "the defense is given a full and fair opportunity to probe and expose [testimonial] infirmities [such as forgetfulness, confusion, or evasion] through cross-examination, thereby calling to the attention of the factfinder the reasons for giving scant weight to the witness' testimony." Whether, how, and to what extent the opportunity for cross-examination is used is within the control of the defendant.

Howard v. State, 853 N.E.2d 461, 470 (Ind. 2006) (citation omitted).

Prior testimony given at a bail hearing has been determined to be admissible at a subsequent trial, where the defendant had the opportunity to confront the witness when the testimony was originally given. See Hammers v. State, 502 N.E.2d 1339, 1344 (Ind. 1987) ("there seems to be no reason to distinguish this case from one in which admission of a deposition is sought"). In Hammers, the witness testified at the bail hearing at the appellant's request. The testimony was under oath and recorded. Both appellant and his attorney were present and appellant had the opportunity to, and did, question the witness extensively. Id.

Here**,** Mahone's prior testimony was given under oath and recorded at the prior judicial proceeding involving Reid's petition to let bail. At that proceeding, Mahone was called as a witness by the defense. Mahone was also questioned by the State and again by the defense. Thus, the testimony was developed by direct, cross and redirect examination. It is comprehensive and takes up 59 pages in the transcript. Tr. at 820-79. Mahone testified in response to questions from the defense regarding his perception and memory of the incidents surrounding the crime, and his subsequent report to the police. Further, the trial court allowed the parties to review the bail hearing transcript to eliminate any portion containing hearsay or other nonrelevant information and the parties had come to a general agreement as to what portions of the transcript to put before the jury. Sufficient procedural safeguards were in place to assure reliability of Mahone's bail hearing testimony that was read to the jury**.** Thus, the trial court did not abuse its discretion in allowing Mahone's prior testimony pursuant to Evidence Rule 804(b)(1).

Conclusion

The trial court appropriately declared the witness unavailable and allowed the admission of his prior testimony. Accordingly, we affirm.

Affirmed.

BAKER, C.J., and DARDEN, J., concur.